

THE HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PATRISHA AND STEVEN
SILLAVAN, on behalf of their minor
children, C.S., B.S., and L.S.,

Plaintiffs,

v.

STATE OF WASHINGTON,
DEPARTMENT OF SOCIAL AND
HEALTH SERVICES and
KATHERINE GRAFF,

Defendants.

NO. 2:17-CV-01126

PROPOSED

ORDER GRANTING DSHS' AND
KATHERINE GRAFF'S MOTION
FOR PROTECTIVE ORDER

NOTED ON MOTION CALENDAR:
MAY 18, 2018

This matter comes before the Court on Defendants Washington State Department of Social and Health Services' (DSHS) Motion for Protective Order (Motion). Dkt. # 12. Plaintiffs failed to file a brief in opposition, which the Court considers to be "an admission that the motion has merit." Local Rules W.D. Wash. LCR 7(b)(2). Having considered the Motion and balance of the record, the Court **GRANTS** the Motion.

PROTECTIVE ORDER

1. Purposes and Limitations. Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be

1 warranted. Accordingly, the Court enters this Protective Order. The parties acknowledge that this
2 Protective Order is consistent with LCR 26(c). It does not confer blanket protection on all
3 disclosures or responses to discovery; the protection it affords from public disclosure and use
4 extends only to the limited information or items that are entitled to confidential treatment under
5 the applicable legal principles; and it does not presumptively entitle parties to file confidential
6 information under seal.

7 2. Conference of Parties. The parties conferred about the need for a protective order
8 on May 1, 2018, as required by Fed. R. Civ. P. 26(c)(1) and LCR 26(c)(1).

9 3. Need for Production. The parties' need for production of privileged and
10 confidential information and records outweighs any reason for maintaining the privacy and
11 confidentiality of those records.

12 4. Prior Sillavan Litigation Records and Protection Order. In a previous related
13 Washington State action, Island County Superior Court No. 14-2-00573-8, *Sillavan v. State*,
14 a protective order was signed by Washington Superior Court Judge Alan Hancock on August 17,
15 2015.

16 5. The information produced in that action is substantially the same information that
17 is to be produced in this action. All protections in this protective order hereby extend to all
18 discovery released in the previous suit.

19 6. Confidential Material. "Confidential" material shall include the following
20 documents and tangible things produced or otherwise exchanged:

- 21 A. DSHS MODIS, FamLink, and Children's Administration files of adopted
22 minor children, L.S. f/k/a L.P. and W.S. f/k/a W.C.
- 23 B. DSHS MODIS, FamLink, and Children's Administration files of Jennifer
24 Childs regarding minor child W.S. f/k/a W.C.
- 25 C. DSHS MODIS, Famlink, and Children's Administration files of Danielle
26 Price regarding minor child L.S. f/k/a L.P.
- D. DSHS MODIS, FamLink, and Children's Administration files of Patrisha
 Sillavan regarding minor children C.S. and B.S.

- 1 E. Adoption Disclosure Files and Legally Free files of minor children L.S. and
2 W. S. f/k/a W.C.
- 3 F. Military personnel files of Patrisha and Steven Sillavan.
- 4 G. Licensing files of Patrisha and Steven Sillavan, containing records of
adults and minors not parties to this case.
- 5 H. Licensing file of Steven Cook, containing records of adults and minors
6 not parties to this case.
- 7 I. DSHS MODIS, FamLink, and Children's Administration files for foster
homes where adopted children, L.S. f/k/a L.P. and W.S. resided.
- 8 J. E-mails related to this case obtained through specific search terms.
- 9 K. Defendant Katherine Graff's personnel file.
- 10 L. Medical, educational, psychological records of minor children W.S. f/k/a
11 W.C, L.S. f/k/a L.P., C.S., and B.S.

12 7. DSHS shall produce copies of the above-listed confidential materials without
13 redacting the following:

- 14 A. The names and personal information, to include medical, psychological,
15 alcohol and chemical dependency treatment, sex offender status, and any
related CPS referrals and/or law enforcement contacts of the following:
- 16 i. B.S.
- 17 ii. C.S.
- 18 iii. L.S. f/k/a L.P.
- 19 iv. A.S. f/k/a E.C.
- 20 v. W. S. f/k/a W.C.
- 21 vi. Patricia and Steven Sillavan.
- 22 vii. Jennifer Childs and Williams Childs, Sr.; W.C., Jr., A.C., I.C.,
23 Q.C., the biological parents and siblings of W.S.
- 24 viii. Danielle Price and Lewis Peters; T.H., the biological parents and
half-sibling of L.S.
- 25 ix. Amy Price, biological grandmother of L.S.
- 26 B. The names of mandatory reporters listed in CPS referrals.

1 C. Defendant Katherine Graff's personnel file, other than personal information
2 (social security number, financial information, personal phone number,
3 personal e-mail address) redacted pursuant to Wash. Rev. Code 42.56.250.
42 U.S.C. § 405(c)(2)(C)(viii)(I).

4 D. Personal information of foster parents.

5 E. A privilege log will be included in all productions noting documents
6 redacted or withheld and the reasons therefore.

7 8. The above-listed records shall be redacted consistent with Wash. Rev. Code 42.56,
8 other applicable statutes, and federal rules 42 U.S.C. § 405(c)(2)(C)(viii)(I), with redactions to
9 include but not be limited to: all social security numbers, driver's license numbers, and financial
10 account information, and information and records covered by attorney-client privilege/work
11 product.

12 9. SCOPE. The protections conferred by this Protective Order cover not only
13 confidential material (as defined above), but also (1) any information copied or extracted from
14 confidential material, (2) all copies, excerpts, summaries, or compilations of confidential
15 material, and (3) any testimony, conversations, or presentations by parties or their counsel that
16 might reveal confidential material. However, the protections conferred by this Protective Order
17 do not cover information that is in the public domain or becomes part of the public domain
18 through trial or otherwise.

ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

10. Basic Principles. A receiving party may use confidential material disclosed or produced by another party or by a non-party in connection with this case only for prosecuting, defending, or attempting to settle this litigation. Confidential material may be disclosed only to the categories of persons and under the conditions described in this Protective Order. Confidential material must be stored and maintained by a receiving party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Protective Order.

11. Disclosure of “Confidential” Information or Items. Unless otherwise ordered by the court or permitted in writing by the designating party, a receiving party may disclose any confidential material only to:

- A. The receiving party’s counsel of record in this action, as well as employees of counsel to whom it is reasonably necessary to disclose the information for this litigation.
- B. The officers, directors, and employees (including in-house counsel) of the receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties agree that a particular document or material produced is for Attorney’s Eyes Only and is so designated.
- C. Experts and consultants to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A).
- D. The court, court personnel, and court reporters and their staff.
- E. Copy or imaging services retained by counsel to assist in the duplication of confidential material, provided that counsel for the party retaining the copy or imaging service instructs the service not to disclose any confidential material to third parties and to immediately return all originals and copies of any confidential material.
- F. In preparation for and during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages

1 of transcribed deposition testimony or exhibits to depositions that reveal
2 confidential material must be separately bound by the court reporter and
3 may not be disclosed to anyone except as permitted under this Protective
4 Order.

5 G. The author or recipient of a document containing the information or a
6 custodian or other person who otherwise possessed or knew the
7 information.

8 12. Filing Confidential Material. Before filing confidential material or discussing or
9 referencing such material in court filings, the filing party shall confer with the designating party
10 to determine whether the designating party will remove the confidential designation, whether the
11 document can be redacted, or whether a motion to seal or stipulation and proposed order is
12 warranted. Local Civil Rule 5(g) sets forth the procedures that must be followed and the
13 standards that will be applied when a party seeks permission from the court to file material under
14 seal.

15 **DESIGNATING PROTECTED MATERIAL**

16 13. Exercise of Restraint and Care in Designating Material for Protection. Each party
17 or non-party that designates information or items for protection under this Protective Order must
18 take care to limit any such designation to specific material that qualifies under the appropriate
19 standards. The designating party must designate for protection only those parts of material,
20 documents, items, or oral or written communications that qualify, so that other portions of the
21 material, documents, items, or communications for which protection is not warranted are not
22 swept unjustifiably within the ambit of this Protective Order. Mass, indiscriminate, or routinized
23 designations are prohibited. Designations that are shown to be clearly unjustified or that have
24 been made for an improper purpose (e.g., to unnecessarily encumber or delay the case
25 development process or to impose unnecessary expenses and burdens on other parties) expose
26 the designating party to sanctions. If it comes to a designating party's attention that information
or items that it designated for protection do not qualify for protection, the designating party must
promptly notify all other parties that it is withdrawing the mistaken designation.

1 14. Manner and Timing of Designations. Except as otherwise provided in this
2 Protective Order (see, e.g., paragraph 13 below), or as otherwise stipulated or ordered, disclosure
3 or discovery material that qualifies for protection under this Protective Order must be clearly so
4 designated before or when the material is disclosed or produced.

5 15. Information in documentary form. (E.g., paper or electronic documents and
6 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial
7 proceedings), the designating party must affix the word “CONFIDENTIAL” to each page that
8 contains confidential material. If only a portion or portions of the material on a page qualifies
9 for protection, the producing party also must clearly identify the protected portion(s) (e.g., by
10 making appropriate markings in the margins).

11 16. Testimony given in deposition or in other pretrial or trial proceedings. The parties
12 must identify on the record, during the deposition, hearing, or other proceeding, all protected
13 testimony, without prejudice to their right to so designate other testimony after reviewing the
14 transcript. Any party or non-party may, within fifteen days after receiving a deposition transcript,
15 designate portions of the transcript, or exhibits thereto, as confidential.

16 17. Other tangible items. The producing party must affix in a prominent place on the
17 exterior of the container or containers in which the information or item is stored the word
18 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant protection,
19 the producing party, to the extent practicable, shall identify the protected portion(s).

20 18. Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
21 designate qualified information or items does not, standing alone, waive the designating party’s
22 right to secure protection under this Protective Order for such material. Upon timely correction
23 of a designation, the receiving party must make reasonable efforts to ensure that the material is
24 treated in accordance with the provisions of this Protective Order.

CHALLENGING CONFIDENTIALITY DESIGNATIONS

19. Timing of Challenges. Any party or non-party may challenge a designation of confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant disruption or delay of the litigation, a party does not waive its right to challenge a confidentiality designation by electing not to mount a challenge promptly after the original designation is disclosed.

20. Meet and Confer. The parties must make every attempt to resolve any dispute regarding confidential designations without court involvement. Any motion regarding confidential designations or for a protective order must include a certification, in the motion or in a declaration or affidavit, that the movant has engaged in a good faith meet and confer conference with other affected parties in an effort to resolve the dispute without court action. The certification must list the date, manner, and participants to the conference. A good faith effort to confer requires a face-to-face meeting or a telephone conference.

21. Judicial Intervention. If the parties cannot resolve a challenge without court intervention, the designating party may file and serve a motion to retain confidentiality under Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of persuasion in any such motion shall be on the designating party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties) may expose the challenging party to sanctions. All parties shall continue to maintain the material in question as confidential until the court rules on the challenge.

Protected Material Subpoenaed or Ordered Produced in Other Litigation. If a party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as "CONFIDENTIAL," that party must:

- A. Promptly notify the designating party in writing and include a copy of the subpoena or court order.

1 B. Promptly notify in writing the party who caused the subpoena or order to issue in
2 the other litigation that some or all of the material covered by the subpoena or
3 order is subject to this Protective Order. Such notification shall include a copy of
4 this Protective Order.

5 C. Cooperate with respect to all reasonable procedures sought to be pursued by the
6 designating party whose confidential material may be affected.

7 22. Unauthorized Disclosure of Protected Material. If a receiving party learns, by
8 inadvertence or otherwise, that it has disclosed confidential material to any person or in any
9 circumstance not authorized under this Protective Order, the receiving party must immediately
10 (a) notify in writing the designating party of the unauthorized disclosures, (b) use its best efforts
11 to retrieve all unauthorized copies of the protected material, (c) inform the person or persons to
12 whom unauthorized disclosures were made of all the terms of this Protective Order, and (d)
13 request that such person or persons execute the "Acknowledgment and Agreement to Be Bound"
14 that is attached hereto as Exhibit A.

15 23. Inadvertent Production of Privileged or Otherwise Protected Material. When a
16 producing party gives notice to receiving parties that certain inadvertently produced material is
17 subject to a claim of privilege or other protection, the obligations of the receiving parties are
18 those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to
19 modify whatever procedure may be established in an e-discovery order or agreement that
20 provides for production without prior privilege review. Parties shall confer on an appropriate
21 non-waiver order under Fed. R. Evid. 502.

22 24. Non Termination and Return of Documents. Within 60 days after the termination
23 of this action, including all appeals, each receiving party must return all confidential material to
24 the producing party, including all copies, extracts and summaries thereof. Alternatively, the
25 parties may agree upon appropriate methods of destruction. Notwithstanding this provision,
26 counsel are entitled to retain one archival copy of all documents filed with the court, trial,
deposition, and hearing transcripts, correspondence, deposition and trial exhibits, expert reports,
attorney work product, and consultant and expert work product, even if such materials contain

1 confidential material. The confidentiality obligations imposed by this Protective Order shall
2 remain in effect until a designating party agrees otherwise in writing or a court orders otherwise.

3 25. A copy of this Protective Order shall accompany each copy of information or
4 records protected by this Protective Order released to any parties' experts. No attorney or expert
5 shall disclose any information gained or derived from the aforementioned information or records to
6 anyone without further order of the Court unless the person to whom the information is disclosed
7 is otherwise entitled to obtain said information pursuant to this Protective Order or to statutory
8 exemptions from confidentiality.

9 26. This Protective Order shall remain in full force and effect until such time as this
10 Court modifies its terms or releases the parties from its provisions.

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13 Dated this the 25th day of June, 2018.

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17 The Honorable Richard A. Jones
18 United States District Judge
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10 **EXHIBIT A**
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12 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

13 I, _____, (print or type full name) of _____
14 _____ (print or type full address), declare under penalty of perjury that I have read in
15 its entirety and understand the Stipulated Protective Order that was issued by the United States
16 District Court for the Western District of Washington on _____ in the case of *Patricia and*
17 *Steven Sillavan, on behalf of their minor children C.S., B.S., and L.S. v. Washington State*
18 *Department of Social and Health Services, et al.*, USDC Cause No. 2:17-CV-01126. I agree to
19 comply with and to be bound by all the terms of this Protective Order and understand and
20 acknowledge that failure to so comply could expose me to sanctions and punishment in the nature
21 of contempt. I solemnly promise that I will not disclose in any manner any information or item
22 that is subject to this Protective Order to any person or entity except in strict compliance with
23 the provisions of this Order. I further agree to submit to the jurisdiction of the United States
24 District Court for the Western District of Washington for the purpose of enforcing the terms of
25 this Protective Order, even if such enforcement proceedings occur after termination of this
26 action.

1 Dated this _____ day of _____, 2018.
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Signature

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Printed name:

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City and State where sworn and signed:
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